



# ARTICLE

## CONSUMER LAW NEWSFLASH



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### the object of all legislative attention in the coming months

Two bills aimed at amending French consumer law will shortly be the object of parliamentary debate.

**1) The draft government bill of the delegated Minister in charge of Consumption, Benoît Hamon, published on March 28, 2013**, is announcing a very consumerist reform. It should be presented to the French National Assembly next June. What are the main elements of such draft?

Emblematically, article 1 of the draft bill introduces a procedure which had been ruled out time and time again in France: class action. It will enable individuals to jointly seek the liability of a single professional in order to obtain compensation for the tangible damage suffered. A consumer defense association will be in charge of representing the group before a court of law or the mediator. This procedure may apply in the case of a sale of goods or the provision of services between a consumer and a professional when the latter has failed to comply with his statutory or contractual obligations or in the case where a final decision handed down in France or before a European authority within the last five years sanctioned his anti-competitive behavior.

The draft government bill also contains many provisions aiming at transposing into French law the provisions of European Directive 2011/83 of October 25, 2013 relating to consumer laws. The professional's pre-contractual duty to inform is therefore reinforced in particular within the framework of sales at a distance. Thus for example, prior to any on-line purchase, the professional must ensure via a control key that the consumer has acknowledged that the order is an "order with obligation to pay" and that the latter will be informed of the accepted means of payment as well as any restrictions that apply. Furthermore, prior to any order, the professional must provide the consumer with additional information on his right of withdrawal (extended to 14 days), regarding the existence, where applicable, of additional costs or a deposit to be paid and the application, if need be, of a code of conduct. The draft government bill also specifies that any commitment relating to the repayment of the price, the replacement or repair of a product which goes beyond the statutory compliance obligations, i.e. the commercial guarantee, will be the object of a written agreement, as well as any customer service.

The draft bill also provides that consumers may terminate their agreement if the purchased good has not been delivered within 30 days or within the agreed time period after a letter has been sent, without response, ordering the professional to perform the delivery within an additional period of time. They will also receive a penalty if reimbursement of the sums they paid occurs more than 14 days after the termination of the agreement.

The fight against the over-indebtedness of households is largely covered in this draft bill. Credit institutions must systematically offer individual borrowers a redeemable loan for purchases of more than €1,000 financed by a revolving loan.

Lastly, the minister intends to reinforce the means of the administrative authorities in charge of consumer economic protection and of product safety and compliance. The authority in charge of competition and consumption may impose pecuniary sanctions and order on-line sales websites to no longer accept any payment before the delivery of the good or the performance of the service. Furthermore, the fraud agents may anonymously proceed with investigations aimed at searching for product safety breaches and receive letters rogatory extending their power of investigation. Criminal penalties sanctioning certain offenses, in particular deceitful trade practices, will be increased.

**2) The bill introduced by Parliament on March 18, 2013 aimed at fighting against obsolescence and increasing product shelf life** aims at fighting against techniques the purpose of which is to decrease, as of the design of the product, its service life in order to favor the renewal thereof. Under the terms of this parliamentary bill, such techniques are allegedly punished by two years' imprisonment and a fine of €37,500, i.e. €187,000 for corporate bodies.

Furthermore, the bill makes provision for the gradual extension of the compliance guarantee period to 5 years (compared with 2 today) (guarantee period annually increased by one year until 2016) and the presumption of existence of a lack of compliance at the time of the sale to two years (compared with 6 months at present). The purpose is to incite manufacturers to produce goods with a longer life expectancy and consumers to postpone the renewal of their purchase to the expiry of the guarantee.

The spare parts required for the use of the good must be available on the market for 10 years as of their sale date.

Lastly, the bill makes provision for the adjustment of the eco-contribution in consideration of criteria aiming at enabling the extension of the product shelf life and for the reinforcement of the consumer's obligation to give information relating to the re-use, recycling and other forms of treatment of waste electrical and electronic equipment.



These bills will most likely be adjusted when discussed in Parliament. We will be sure to keep you informed of such adjustments.

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